

ESTTA Tracking number: **ESTTA573323**

Filing date: **11/26/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Shopology, LLC
Granted to Date of previous extension	11/30/2013
Address	7926 Hollington Place Fairfax Station, VA 22039 UNITED STATES
Attorney information	Martin Schwimmer Leason Ellis LLP One Barker Avenue, Fifth Floor White Plains, NY 10601 UNITED STATES tmdocket@leasonellis.com, schwimmer@leasonellis.com, weiss@leasonellis.com Phone:914-821-8011

Applicant Information

Application No	85907549	Publication date	10/01/2013
Opposition Filing Date	11/26/2013	Opposition Period Ends	11/30/2013
Applicant	Shopology 5005 Galleria Drive, #2218 Farmers Branch, TX 75244 TX		

Goods/Services Affected by Opposition


Class 035. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Market research shopping by researchers who pose as customers to evaluate the quality of service delivered

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86046117	Application Date	08/23/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SHOPOLOGY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 045. First use: First Use: 2004/01/01 First Use In Commerce: 2004/03/15 E-commerce based personal shopping service for women

Attachments	86046117#TMSN.jpeg(bytes) Notice of Opposition.pdf(99504 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Rachel M. Weiss/
Name	Rachel M. Weiss
Date	11/26/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/907,549
Published in the Official Gazette on October 1, 2013

	X	
SHOPOLOGY, LLC,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
SHOPOLOGY [sic],	:	
	:	
Applicant.	:	
	X	

NOTICE OF OPPOSITION

Opposer Shopology, LLC, a limited liability company organized and existing under the laws of Virginia, having an address of 7926 Hollington Place, Fairfax Station, Virginia, 22039, believes it would be damaged by the issuance of a registration for the trademark SHOPOLOGY as applied for in Application Serial No. 85/907,549, filed April 18, 2013, for “market research. Shopping by researchers who pose as customers to evaluate the quality of service delivered” in Class 35, and therefore opposes the same. As grounds for its opposition, Opposer, by its attorneys Leason Ellis LLP, alleges as follows:

1. At least as early as March 15, 2004, and well prior to the April 18, 2013 filing date of Applicant’s intent to use application, Opposer, by itself and through its predecessor-in-interest, has used the mark SHOPOLOGY to promote its online shopping website and offer online shopping concierge services, including personal shopping services, and provision of a searchable database of retail boutiques.

2. Opposer owns Application Serial No. 86/046,117 for the mark SHOPOLOGY covering “e-commerce based personal shopping service for women” in Class 45 (the “Services”), which cites a date of first use in interstate commerce in connection with the services of March 15, 2004. Opposer’s first use date is well prior to the filing date of Applicant’s intent to use application.

3. Opposer also owned now-canceled Registration No. 3,156,228 for the mark SHOPOLOGY covering “e-commerce based personal shopping service for women” in Class 45, which cited a date of first use in interstate commerce of March 15, 2004. This registration lapsed when Opposer inadvertently missed the deadline to file a declaration of use.

4. Opposer has made continuous use of its SHOPOLOGY trademark in commerce in connection with the Services since at least as early as March 2004. As such, its trademark rights are valid and subsisting.

5. Opposer has spent a substantial amount of time and resources in commercializing the mark SHOPOLOGY. As a result of Opposer’s widespread use of the mark, the mark has attracted a significant amount of recognition and goodwill among consumers.

6. On April 18, 2013, Applicant Shopology, allegedly a Texas limited liability company¹, filed the application at issue to register the mark SHOPOLOGY for “market research. Shopping by researchers who pose as customers to evaluate the quality of service delivered.” It appears to have later been amended to cover “market research shopping by researchers who pose as customers to evaluate the quality of service delivered” in Class 35.

7. The mark that Applicant seeks to register is identical to Opposer’s prior mark SHOPOLOGY. Applicant is seeking to register the mark for services that are the same or closely related to the services for which Opposer has previously registered, applied for and used

¹ Applicant filed its application as an “Inc.” and then amended its application to state that it is a “LLC.” On information and belief, neither entity is registered with the Texas Secretary of State.

its mark. Given that the trade channels in the opposed application are not restricted, it is assumed that Applicant's services will be offered in the identical channels of trade as Opposer's services. Based on the similarities of the marks, services and trade channels, the public is likely to associate Applicant's applied-for services under the mark SHOPOLOGY with Opposer or with Opposer's services, or to believe that Applicant's services are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer.

8. For the above reasons, any registration for the mark SHOPOLOGY by Applicant is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that those services emanate from or are otherwise sponsored or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

By reason of the foregoing, Opposer will be damaged by the registration of the mark SHOPOLOGY to Applicant.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 85/907,549 be denied.

The opposition fee in the amount of \$300.00 for one class is filed herewith. If for any reason this amount is insufficient, it is requested that Opposer's attorneys' deposit account No. 50-4570 be charged with any deficiency.

Dated: November 26, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MS' with a large flourish extending to the right, positioned above a horizontal line.

Martin Schwimmer
Rachel M. Weiss

LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 821-8011

Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served by First-Class mail, postage prepaid, upon the Applicant, this 26th day of November 2013, addressed as follows:

Ms. Noriess Beauvais
Shopology
5005 Galleria Drive, #2218
Farmers Branch, Texas 75244

Rachel M. Weiss
Rachel M. Weiss